

It's Time For The State To Investigate The TDDA

For years, the Troy Downtown Development Authority (TDDA) has been collecting Tax Increment Revenues (captured property taxes) from the entire DDA district in direct violation of the law. Even though individuals such as Richard "Red" Hughes and myself have discussed this with many people (including the Troy City Council, TDDA, Oakland County commissioners Chuck Palmer & John Garfield (now state representative Garfield), and many more up the political ladder), no one has provided the documentation to refute our claims. Why is it when a private entity violates the law, the state quickly charges them when it is brought to their attention. Yet, if a public entity violates the law, they drag their feet and hope no one bothers to follow up. Since the law states that the State Tax Commission is the legal authority to enforce PA 197 of 1975, it is time to bring them into the act and have them investigate and explain why the TDDA is allowed to continuously violate the law. Hopefully in the next few weeks, I will be given a contact person for the State Tax commission to do just that. I will provide them with the following as well as additional information that may show that the TDDA intentionally meant to defraud the City, OCC and Oakland County of tax dollars.

You no doubt are asking yourself, what is Vic talking about? Hasn't the City of Troy legal staff stated that all is being done according to the law. Let me present my case and let you decide whether I have misinterpreted the law or is it the TDDA that has misinterpreted the law.

Violation: Collecting more Tax Increment Revenues than the law allows.

The TDDA has collected Tax Increment Revenues from the entire district when by law they are only to collect it from the development area for the development plan. They have done this since their inception. For background, below are the definitions for development area, downtown district and tax increment revenues. Note, that the definition for tax increment revenues are defined as those generated by the development area, not the downtown district.

125.1651 Definitions.

Sec. 1. As used in this act:

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(h) "Development area" means that area to which a development plan is applicable.

(i) "Development plan" means that information and those requirements for a development set forth in section 17.

(j) "Development program" means the implementation of the development plan.

(k) "Downtown district" means an area in a business district that is specifically designated by ordinance of the governing body of the municipality pursuant to this act.

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(z) "Tax increment revenues" means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured assessed value of real and personal property in the development area, subject to the following requirements:

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The treasury department addresses this on their web site where they provide the following:

What is the difference between an authority district and a plan?

Answer:

First – The local unit establishes an authority (DDA, LDFA, TIFA) with a specific geographic district, and appoints an authority board.

Then – The board writes a development plan (and usually a tax increment financing plan to fund it) for a specific geographic area within the district area. There can be more than one plan area in an authority district, but plans may not overlap. (Overlap information does not apply to Brownfields and certified technology parks.) The development plan and TIF plan must be adopted by the local unit before the plans are valid.

DDA mills are levied within the district boundaries.

DDAs and TIFAs capture property taxes within the plan boundaries. LDFAs capture within each eligible property, or within a certified business park (formerly called a "certified industrial park"), or certified technology park.

Note the line that states:

“The board writes a development plan (and usually a tax increment financing plan to fund it) for a specific geographic area within the district area.”

The development area is a subset of the district, not the entire district. The TDDA has confused their ability to levy up to 2 mills upon the entire district (DDA mills) with capture property tax which is for property taxes within the plan boundaries – the development area (see definitions).

It is interesting to note that the first two plans specified distinct development areas that were subsets of the entire district. After I raised this point in 1999, a change was made to the next development plan to overcome this problem (where the intent to defraud comes in). Development Plan #3, which amended development plans #1 & #2, changed the description of the development area, as described in Development plans #1 as amended by Development Plan #2, to be **coterminous** with the TDDA **district boundary**. If this doesn't set off the bells and whistles, it should.

This tactic flies in the face of the intent of the law. Is it legal? I doubt it. Why would the Department of Treasury Web site state the following:

Can a DDA or TIFA plan spend revenue outside of its development area?

Answer: According to state law, the plan may spend revenue only for projects described in the development plan and/or tax increment financing plan, and the projects must be allowable under the law. The revenue must be spent for the benefit of the development area. Revenue of one plan may not be used to pay an obligation or expense of another plan. The State Tax Commission's policy is that revenue must also be spent on improvements or properties located in the plan's development area. The State Tax Commission will enforce this policy on a prospective basis as of April 14, 1998, but not

retroactively. After April 14, 1998, a plan may not start any new projects outside of that plan's development area. The State Tax Commission may waive this requirement for certain infrastructure improvements made in the development plan that must extend outside the development area's boundaries. Note: LDFA's are not included here because section 12(2) of the Local Development Financing Act (P.A. 281) has specific provisions regarding restrictions on the use of tax increment revenue.

Why would the state specify the April 14, 1998 date as a date when a plan can not start new projects outside of the plan's development area if a DDA can just specify the entire district as a development area? Is this a loop hole or is it a violation of the law to do so? The TDDA has stated that it was their intent that the entire district be defined as the development area to capture property taxes. If a Downtown Development Authority is allowed to designate the entire district as the development area to capture property taxes, even though the projects only involve some parcels within the district, then my concerns are mute. But if that is allowed, why has the Department of Treasury gone to such pains to distinguish between the development area and the district. Only an investigation can resolve this issue.

The TDDA has committed other violations of the Act that I will address with the State Tax Commission, but this violation has been the one that both Red and I have previously raised. If you have any comments concerning what I have just discussed, please feel free to contact me.

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